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Roebuck Lecture 2024

Access to Arbitral Justice for Local Communities: Mitigating the cost of corruption and providing access to justice for local communities.

Delivered by Professor Emilia Onyema PhD FCIArb

Catherine Dixon: I would now like to welcome our speaker, Professor Emilia Onyema. Emilia is an independent arbitrator and a professor of International Commercial Law at SOAS, University of London, where she teaches international commercial arbitration, international investment law and commercial law in a global context. She's qualified to practice law in Nigeria and as a solicitor in England and Wales and is a fellow of the Chartered Institute of Arbitrators. She convenes the SOAS Arbitration in Africa Conference series and leads the SOAS Arbitration in Africa biennial survey research project. She coauthored The African Promise and founded the Arbitration Fund for African Students, a registered charity organization in England to support students with an interest in arbitration and ADR. She's a director of SOAS Arbitration and Dispute Resolution Center. Her research interests focus on the development of international arbitration in Africa and the engagement of Africans in international arbitration. She sits as an arbitrator and acts as a legal expert in international arbitration. Emilia's lecture will focus on the people who are most impacted by corruption, and discuss why arbitration and national courts should be made available as a tool for victims of acts, and as a tool and access to justice. She will consider the wider impact of corruption, which includes lower trust and confidence in public authorities and institutions, reduced job opportunities, lack of private and foreign investment inequality, and stifled economic growth and development for local communities. The consequences are direct and stark, like reduced access to basic services such as health care, education and justice. International economic law provides some tools for us to address corruption. Treaties and contracts can provide a framework to hold wrongdoers accountable to governments, investors, and the business community. These agreements provide dispute resolution mechanisms such as arbitration, mediation, or litigation, and offer potential avenues for damages and compensation arising out of corrupt transactions. Thank you, Emilia, and welcome.

Professor Emilia Onyema: Thank you very much. Thank you.

Professor Emilia Onyema: So, thanks to the Chartered Institute of Arbitrators for the invitation to give the 2024 Roebuck Lecture. I knew Derek Roebuck, in whose honor this lecture series was established and had the honor of supporting the publication of his book, "Disputes and Differences Comparisons in Law, language, and History", in 2010. This lecture series have been delivered by well-respected academics and practitioners, including a friend of mine, Doctor Duggal, who gave the 2023 lecture. I also note the 2023 Alexander Lecture delivered by Toby Landau KC on the title, "International Investment Arbitration and the search for Depoliticization", when to be invited us to watch the short film *The Tribunal*, which depicts the experiences of the local communities of the Intag Valley in Ecuador and their experience of the Copa Mesa v Ecuador arbitration. I'm therefore very grateful for this opportunity to speak on a topic that effectively picks up from where Doctor Duggal and Mr. Landau left off, and one that is very close to my heart and which I have thought about for some time, and I gave a snippet of my views during my presentation at ICCA in Edinburgh 2022. So I'm going to be speaking on the topic, "corruption, access to arbitration for local communities, mitigating the cost of corruption, and providing access to justice for local communities". Corruption in arbitration is a topic that has occupied colleagues . As a matter of fact, on OGEMID , a few months back, we had a very lengthy discussion on corruption within the global arbitration community in recent times.

Professor Emilia Onyema: Also, there have been some high-profile cases at various national courts that raise all sorts of questions relevant to corruption. The most important for me of this line of cases are the two English High Court judgments in Nigeria versus P&ID given by Sir Ross Cranston on 4th of September 2020, extending time for Nigeria to challenge that award; and the second by Mr. Justice, Robin Knowles, on 23rd of October 2023 setting aside that award. This is primarily because I am a Nigerian, as if you don't know already. But anyway, I am a Nigerian citizen who is directly impacted by the core issues arising from the decision which I will discuss in this lecture. So what am I going to talk about? I will set out the context of this lecture and define what I mean by local communities. I will then discuss the following core issues, which I have framed as questions to get you thinking. The first one is what is arbitration doing about providing access to those impacted by its outcomes? The second: Why have these measures not worked? Why should these local communities have direct access in arbitration? How can local communities get this access that we're talking about? The second part of the lecture will then look at, in the context of corruption and the Nigeria versus P&ID decision, some of the suggestions made by Justice Knowles. I would pick up two.

Professor Emilia Onyema: How should arbitrations involving states with allegations of corruption be treated? Drawing from the same judgment, in arbitrations involving states

and the public, should arbitrators in such disputes be more interventionist? A couple of caveats, on what I will not be talking about, so don't ask me questions on those. My discussion will not engage with corruption by the tribunal itself, or of sham arbitrations and arbitrators. National laws deal with these issues in criminal proceedings. The parties may also be able to pursue such individuals in civil litigation, and the international arbitration community continue to self-police or regulate itself to reduce such occurrences. The second caveat is that I do not plan to provide answers to all the questions that I shall raise this evening. Any good teacher, of which I am proud to say I am one, leaves their students with more questions than answers. So, the goal is that you keep thinking about the things I'm going to speak to you about this evening. So what is the context of this lecture? The direct effects of corruption in commerce, whetherthey involve the state or not, falls on citizens. In private commercial transactions, and I'm just going to give you some examples so that we don't think that this is a developing world problem, such as the Dieselgate scandal. So the diesel emissions manipulations by some major automakers in the West, consumers pick up the costs in corrupt activities involving the state or its agencies and public officials; such as the Covid-gate scandal in the UK; and bribery of government officials in many developing resource rich countries such as mine, Nigeria, and the Democratic Republic of Congo, to name a few.

Professor Emilia Onyema: It is the same public or local communities that pick up the cost, poor quality work, ineffective services delivery by their governments, poor human security, poverty, underdevelopment amongst others. The states can pursue the investors, or the investors can pursue the state or state agency in arbitration, as we will see. But this process does not involve the core recipients of the consequences of these relationships. It is correct that these local communities may have access to national courts to pursue redress against their states or the investors in tort, and increasingly under company or corporate law in foreign jurisdictions, against their parent companies. It is obvious that these are not adequate measures, and also take the dispute resolution process out of the hands of the local communities, who would need to rely on public interest litigators and international NGOs, who may or may not have an interest in pursuing the litigation. The consequences of weak governance in consonance with poor investor behavior may lead to serious domestic, regional, and global disasters. I'm going to show you some slides,and why you're going to look at these slides is because vision helps.

Professor Emilia Onyema: I'm just going to speak to you about a couple of slides so that you can get an understanding of the impact of poor behavior by states and investors. This first slide, it talks about the explosion and leakage of gas at the Union Carbide plant in Bhopal, which led to the deaths of several thousand people, which we have estimates of between 3500 to 15,000 dead. An estimated 500,000 people were exposed to toxic gas. This second one is here in the UK. An explosion at Hertfordshire Oil Storage Terminal, owned by Total UK and Texaco. The third one is a blowout and explosion at BP's

Deepwater Horizon platform. I think everybody would remember that one and the various cases. The next one is the roof of a tunnel which collapsed at the Grasberg copper mine in Indonesia, owned by Freeport-McMoran and Rio Tinto, 28 workers were killed. The next one. Unusual flash flood destroyed a village inside a Chinese mining concession in Mozambique, 293 people became homeless. A dam in Brazil burst and caused a huge mudflow which killed 13 people and left 500 people homeless. The dam was part of a mine operated by Samarco, a joint venture between Vale and BHP Billiton, and Brazil's government said that this is the worst industrial disaster in the country's history. A dam collapse in Laos, which led to widespread flooding and destruction, including the deaths of 71 people and displaced 14,400 people.

Professor Emilia Onyema: This is in Democratic Republic of Congo, where 43 miners were killed when a tunnel collapsed at a mine in Kolwezi. And of course, shell and other international oil companies operating in the Niger Delta of Nigeria. As I've noted under each of those slides, there are several reasons as to the cause of such disasters, including weak regulations by the government and poor conduct by the investors. Allegations of corrupt practices are never too far away, as part of the undercurrent for such occurrences as these disasters testify. Citizens, local communities are impacted the most, but these same local communities are the one major group that lack access to any form of direct redress through arbitration. So who are the local communities? In one word, citizens, as evidenced from the slides you have just seen and the environmental disasters. If we recollect, in most cases with extractive resources, the government or its agency or state-owned enterprise would generally enter into a joint venture relationship with the foreign or domestic investor to exploit these resources. Governments are partners with the companies. The relationship is primarily commercial and for profit, and rightly so. Ideally, the proceeds from these ventures that go to the government should be for the benefit of the citizens and fund various public goods, so the citizens are also beneficiaries of these relationships. But this is not the story, however. When the government is weak with poor regulation over the companies, the exploitation of the resources are no longer for the benefit of its citizens.

Professor Emilia Onyema: When disputes arise, such disputes arise between the state or its agency and the company, whether foreign or domestic. The citizens are not made parties to the contract, and so have no rights or obligations arising from the contract, which means they cannot sue or be sued on the contract. Principle of privity of contract, though they take the benefit and suffer any damages or loss arising from the contract. Theses contracts generally include arbitration agreements, either in concession contracts, sector specific agreements, as we would see in P&ID versus Nigeria or in various international investment agreements. It is only the parties to those agreements that can pursue claims under it in arbitration. If this starting point is correct, we can then revisit what arbitration is to enable us understand how arbitration is addressing some of these gaps. So what is arbitration? I’m sure you all know the answer. But anyway., let me

tell you what I think arbitration is. Arbitration is a judicial process through which parties privately resolve their disputes following the adversarial or inquisitorial system of adjudication. If arbitration is a judicial process, it follows that its ultimate aim should be to deliver justice, in the sense of procedural fairness, so due process and rule of law, and part of rule of law implicates access to the justice delivery system or mechanism by those who suffer loss or damage from the transaction.

Professor Emilia Onyema: I'm going to focus on the lack of access for local communities in arbitration over disputes that directly affect them. I want to start by looking at what arbitration is doing to combat this lack of access by local communities. Commercial arbitration is not doing anything. On the basis that it is a creature of contract. So, you're not party to this contract., what is your business in this contract? Investment arbitration is doing something. So Investment arbitration looks at transparency and the submission of amicus curiae briefs. On transparency, we have the UN Convention on Transparency and Investor State Dispute settlement, the Mauritius Convention. And then we have the Uncitral Rules on Transparency in Treaty based Investor-state arbitration since 1st of April 2014. They are related. These instruments set up procedural rules which provide for transparency and accessibility to the public of investor state arbitration, to provide for transparency in international investment Agreements adopted prior to 1st April 2014. The Uncitral rules commence from 1st April 2014. There is an interesting registry on the Uncitral website. It's called the Transparency Registry. There's no point asking you to do a show of hands, of how many people are even aware that there is such a thing, as the transparency registry on the Uncitral website, and it says that it is a consolidated global database of ISDS cases and related documents, which is freely accessible and free of charge to the public.

Professor Emilia Onyema: And that database currently has 127 items that refer to the rules. Out of the 127, 47 treaties are in force. The Transparency Convention itself has been signed by 23 states and ratified by nine states. And that says something of the interest of states, even in the transparency of their own process. So some good news. Yesterday, 25th June 2024, the EU adopted the decision to sign the convention, which will effectively apply to the EU and its 27 member states. So that will bump up the nine states when it is ratified by the EU Parliament. And then the ICSID tribunal, currently ongoing in Riverside Coffee against Nicaragua will hold its hearing in public next week through live streaming. It will be interestingto get some data on the number of viewers and how long the viewers stayed with the proceedings. On amicus submissions, reforms under the ICSID arbitration rules, particularly rule 37, allows for site visits and inquiries and submissions by nonparticipating parties. So sub rule two, which I'm going to quote for you, says. "After consulting both parties, the tribunal may allow a person or entity that is not a party to the dispute. In this rule called the non-disputing party to file a written submission with the tribunal regarding a matter within the scope of the dispute.

Professor Emilia Onyema: In determining whether to allow such a filing, the tribunal shall consider, among other things", the extent to which, it then gives a non-exhaustive list. Article four of the Uncitral Rules on Transparency also makes provision for amicus submissions. And then, of course, we have a host of tribunals that have accepted the filing of amici, briefs by nonparticipating parties. In my view, these measures are at best focused on keeping local communities only informed as third parties. It does not engage them as principal parties who live on a daily basis, with the aftermath or consequences of the actions of the parties to this contract. The parties include the states themselves. The measures therefore do not answer the question of access for local communities. Moreover. These measures apply in investor state arbitrations, not in commercial arbitrations, and not in commercial arbitrations involving states. The question is whether this should be extended to such commercial arbitrations. It appears that such level of transparency will be useful for the process, and provide a means for all that may be impacted to observe, but not necessarily participate. Observing and participating are two different actions. So why have these measures not worked? One obvious reason, as I have said, is because the local communities who are directly impacted by the actions of the states and companies are treated as third or non parties to the transaction, the contract and arbitration. It is as though they do not exist.

Professor Emilia Onyema: Though they are the ones that suffer the direct consequences of the actions of these parties. Though the local communities are directly and in a very real sense, impacted by the transaction and the outcome of the arbitration, yet their voices are excluded from the process of arbitration. What would be our response in a room full of arbitration practitioners? We would respond and we would say that this is why the process is contract based. And if the local communities are not parties to the transaction or contract, then surely they cannot be parties to the arbitration. Moreover, such local communities should be represented by their state in the transaction. contract and arbitration. This response in itself sounds fair and reasonable. However, we may want to take another look and again, ask ourselves, what is this process of arbitration about? I suggest that it is justice delivery. If that is correct, how just is that process? If the primary individuals, the local communities or citizens who are directly impacted by the consequences of the transaction leading to the arbitration are excluded from the arbitration process? I'm not the first one asking these questions, so I'm going to give you a quote later. So how can these communities gain access to the arbitration proceedings? One suggestion, which I term as radical, for our consideration is this: Direct access to the arbitration as witnesses, or to provide evidence that the tribunal must consider and reflect in its final award.

Professor Emilia Onyema: We do not want a Copper Mesa versus Ecuador situation. Where the witnesses left their various homes traveled all the way to Washington, D.C., and were not even heard, Were not seen, did not even see the room where the individuals that were determining their livelihood and what was going to happen to

them going forward, where they were sitting. That is not justice in any shape or form. And we have to challenge ourselves to understand and appreciate that that is not what arbitration is about. Such direct access will engage the local communities, they will feel heard, and this may help with the legitimacy problem that arbitration currently has. But how will such access be actioned? Who will pick up the cost of this access? How will such local communities be identified and engaged in a manner that will not be disruptive of the arbitration? Should the parties, that is the company and the state, be required to conduct this engagement and put the views of the local communities in evidence. I note that rule 32 two of the Icsid arbitration rules just does not go far enough. The rule provides, "unless either party objects the tribunal after consultation with the secretary general, may allow other persons besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony and officers of the tribunal to attend or observe all or part of the hearing, subject to appropriate logistical arrangements".

Professor Emilia Onyema: The tribunal shall, for such cases, establish procedures for the protection of proprietary or privileged information". End of quote. This issue of engaging local communities was raised in the Uncitral working Group three. And I quote, I like the quotation of Investment Treaty News, the way they've set it out, and this is the quote, "any person who has an affected interest should have a right to standing in a legal proceeding, at least to the extent of that interest. Yet this basic right is grossly disrespected in ISDS. When foreign investors sue countries, they often make allegations and raise issues that affect others who have no legal right to participate. Because ISDS excludes others from the process of deciding foreign investor claims. Therefore, investors can make allegations against people and organizations that have no right to reply. Where the person has been denied the right of standing an ISDS tribunal risks making a decision that harms someone without having heard from him or her. That is deeply unfair. While the procedural option of appointing an amicus curiae can be very helpful, its purpose is very different. Amicus was never meant as a substitute for the right of standing. In a fair process, all affected parties would have notice of the claim and its relevance to their interests, and an opportunity to decide whether to seek standing to the extent of their affected interest. As the proceedings unfold, it may emerge that the party can provide facts that the investor and government could not or did not provide.

Professor Emilia Onyema: To protect their rights or interests effectively, the affected party should also have access to the relevant evidence put before the tribunal. An opportunity to test the evidence, an opportunity to make claims and submit evidence, and so on". End of quote. Of course, this issue did not make it onto the working group three reforms that remain ongoing. I now turn to the second part of my lecture, which will focus some more on corruption and draw extensively from the Nigeria versus P and ID judgment of 2023. Should it make any difference if corruption is engaged in the

transaction? In other words, should the allegation of corruption where a state or state entity is party to the transaction and arbitration, be considered a major distinguishing factor to support the inclusion of local communities or citizens? States now appear to allege corruption on every turn. Some states are more notorious than others, in flying the corruption flag. That's the number of times corruption is raised as a defense to the enforcement of an award, or in arbitration. This in itself, cannot be right, particularly if we agree that corruption is illegal. In my view, the answer to my question on whether it should make any difference if corruption is engaged in the transaction is a yes. This takes us back to where this lecture started, and I appreciate that. Mr. Justice Knowles said that the P&ID versus Nigerian facts are unusual.

Professor Emilia Onyema: I'm not very sure how unusual the facts are. It's just that this time around, it came before the courts and we heard about it. My view is on the basis that the citizens of the state directly bear the consequences of the corrupt practices of their public officials and the private entities. The public or local communities, again, do not have access, either as parties or observers to the arbitration because of the privacy of the arbitration and the fact that they are not parties to the dispute or to the arbitration. So I'm now going to examine some suggestions that Justice Knowles made on the need for greater public scrutiny of the arbitration process, where a state or state owned entity is involved, and for the tribunal to be a little interventionist, if you like, in such disputes. He also raised other issues. For example, discovery or disclosure of documents in arbitration. If Nigeria did not have access to this tool (in litigation), they would not have been able to prove the alleged corrupt practice. Drafting major commercial contracts involving a state. And he talked of the need for balanced provisions in such contracts. And then he also talked about the need for adequate representation of the state by counsel and others. I'm not dealing with those. I'm going to focus briefly on the need for public access, which he describes as open access, and intervention by the tribunal.

Professor Emilia Onyema: Following a brief description of corruption as a breach of international public policy. I'm going to try and define corruption for you. It's one of those things that when you see it, you know it. How do you describe it or how do you define it effectively? You're not alone. The United Nations Convention against corruption. Which was adopted in 2003 and has been ratified by 187 states, has no definition of corruption, but is a convention on corruption. The convention is designed around four main pillars, the first being prevention of corruption or corrupt practices, which is the phrase it uses. The second is criminalization of corrupt practices. The third is cooperation by parties in sharing information. And the fourth is recovery of assets. It notably does not include, as I said, a definition of the word corruption, but it includes provisions on some behaviors which we would usually characterize as corruption, such as bribery, embezzlement, influence peddling, work related exploitation, illicit enrichment. Transparency International, on the other hand, defines corruption. And their definition says that

“corruption is the abuse of entrusted power for private gain”, which is very broad and wide. They also note that corruption erodes trust, it weakens democracy, it hampers economic development, and it further exacerbates inequality, poverty, social division and the environmental crisis. We can all agree that corruption is an issue of international public policy or transnational public policy, whichever you prefer, which is illegal under national laws and international law.

Professor Emilia Onyema: So let's look a little bit at the P&ID versus Nigeria facts. The facts are not in dispute and are quite clear. Corruption was not raised in the arbitration because Nigeria was not even aware of the corruption during the arbitration. However, several facts from the arbitration should have raised concerns with the tribunal. A couple of examples: in the context of Nigeria, which is very well known for corruption in its public officials. That is a red flag. The 20-page Gas supply and Processing agreement. The tribunal should have been a little bit concerned. The lack of performance on the part of P and ID of its own obligations in the contract should have been noted. And of course, the amount involved, it should have raised concerns. So the facts of P and ID very briefly: Nigeria promised to deliver wet gas to P and ID for P and ID to process into lean gas for sale and the proceeds to be shared between the parties. Good deal. P and ID promised on its part to purchase land and construct the processing plant. The contracts: The GSP was signed in 2010 and arbitration commenced in 2012. So an effective period of two years. And P&ID said they spent about 40 million dollars in preparing for the bid. So what happened? What could go wrong with such a wonderful contract? Of course, Nigeria did not supply the wet gas because Nigeria had no wet gas in the first instance to supply.

Professor Emilia Onyema: Nigeria did not supply the wet gas and P&ID did not buy the land or construct the plant either. The tribunal found Nigeria breached the GSP and the majority awarded P&ID 6.6 billion dollars as it had claimed. There was no recognition by the majority of the tribunal of the fact that P&ID did not buy the land nor construct the processing plant in breach of its promises under the GSP. Now I'm not dancing around the fact that Nigeria was not great either. Nigeria was obviously not well represented, did not pursue the arbitration with any diligence and the tribunal gave several time extensions. Neither the tribunal nor Nigeria were aware that Nigeria's legal documents were shared with and retained by P and ID and their lawyers. And justice Knowles recognized this where he said, I quote, “in the arbitration, the tribunal did what it did with what it had. But the fact is that the arbitration was a shell that got nowhere near the truth”. So that's the context. As it relates to privacy of arbitration, the Nigerian citizens are the local community in this transaction and were not represented in the arbitration, not by the state, nor by themselves. They were not even aware of the arbitration until they heard they had to pay 6.6 billion dollars. To the average Nigerian, this is the way they understand P&ID versus Nigeria:

Professor Emilia Onyema: P&ID spent or invested 40 million USD and in two years reaped a bumper harvest of 6.6 billion USD. You would agree with me that it's difficult to see the justice in this. And to quote counsel to P&ID from the judgment. Quote. “Section 68 is not there to give you a remedy. If you instruct an honest lawyer who makes a mess of it or doesn't take an available point, that is just tough. You have made your arbitration bed and you lie on it”. If I could zoom into your minds, I suspect that would resonate with you, with most of you in the room. But justice knowles. Notes in response. “Blunt and correct. But, unless accompanied by public visibility or greater scrutiny by arbitrators, how suitable is the process in a case such as this, where what is at stake is public money amounting to a material percentage of a state's GDP or budget? Is greater visibility in arbitrations involving a state- or state-owned entities part of the answer?” End of quote. Did the P&ID tribunal consider the 220 million Nigerian citizens whose funds were being spent? I very much doubt that they did. Would it have made any difference if the tribunal remembered that this transaction was made for the benefit of the 220 million Nigerian citizens who did not receive the promised benefit, and yet were required to pay the 6.6 billion USD? I do not know the answer to this question.

Professor Emilia Onyema: But I think that this knowledge would have made the tribunal to ask some obvious questions of both sides, if you like, on behalf of the Nigerian citizens who were not parties to the arbitration nor in the room, but who had to pay the award. Justice Knowles is of the view that, “the open court principle helps keep judges up to the mark, allows for scrutiny of the process, what the lawyers and other professionals and the state is doing to address the dispute on behalf of its people”. He also notes that, quote, “an open process allows the chance for the public and press to call out what is not right”. End of quote. I think that the knowledge by the arbitrator that the award will be public will help in arbitrators taking their task more seriously. This is not an imputation that the tribunal did not take their task seriously. The arbitration community is already moving in this direction of publication of redacted awards. So we have Jus Mundi, Italaw, Icsid, PCA and co., Which also will support greater analysis of their reasoning for the development of the law and relevant jurisprudence and consistency of interpretation and decision making. On the side of the local communities, I'm not sure that Nigerian citizens would have actively followed the arbitral proceedings or hearings, even if they had access, though some civil society organizations may have followed the hearings and shared their views in bite size, headline grabbing terms, that would have caught the attention of some sections of the Nigerian society.

Professor Emilia Onyema: Would these have made any difference to the shambolic participation of Nigeria in the arbitration? I doubt it. Why? Because arbitration is a private process. Who will know about it? Who will find out? We can get away with it. This means that in making these processes public, local communities or citizens will also need to engage for the open justice dimension of this discussion to be truly meaningful. I will now move on to briefly examine the second issue of arbitrator intervention in the

arbitration. According to Justice Knowles, at paragraph 587, the failure by counsel, experts, politicians and civil servants on the side of Nigeria meant that, quote, "the tribunal did not have the assistance that it was entitled to expect, and which makes the arbitral process work". End of quote. He then asks what a tribunal can do and, after recounting how the tribunal tried to help, noted that the tribunal took a very traditional approach, and he continues. Quote. "But was the tribunal stuck with what parties did or did not appear to bring forward? Could and should the tribunal have been more direct and interventionist when it was so clear throughout the arbitration that Nigeria's lawyers were not getting instructions, etc. should the tribunal have taken the initiative to encourage exploration of new bands of contract law and the law of damages that may today be required where major long term contracts are involved?" In my view, and keeping in mind the goal of arbitration, which is justice delivery,

Professor Emilia Onyema: the tribunal needs to be proactive. Last week at the Africa Arbitration Academy debate of the Titans 2024, in which yours truly was honored to have engaged and battled with Georgies Petrochilos KC, founding partner, Three Crowns. Georgios was of the view that this is really asking the tribunal to adopt an inquisitorial approach in arbitration. So again, what would your response be or our response as arbitration practitioners? Most likely we would respond and say where both parties are represented by counsel, then it is for the parties to present their case and not for the tribunal to intervene as though one party was not represented. And I do agree. But, we may also ask ourselves what we mean by representation. Does it matter that such representation is not effective? How would this response lead us to achieve justice in the dispute before us? Tribunals can use red flags and there is a tool kit for arbitrators on this. You can easily Google it and find it online, which provides a list of red flags circumstances by the Basel Institute on Governance. It should prompt the arbitrator to investigate. The more of such red flags, the more certain the tribunal should be to dig a little deeper. I have divided the circumstances from the toolkit into three broad categories:

Professor Emilia Onyema: The first one where there is an intermediary used for the transaction, the second one the way the payment arrangements are structured, and the third one, which I think that, the P&ID situation would fall under is the unusual documentation. And where the documentation is opaque, little or no documentation, inaccurate or incomplete financial statements, or the agreement is poorly drafted or it's not usual documentation for the type of transaction. A quick run through of some investor state arbitrations would show how some of these tribunals have dealt with it, the idea being that it's not new. It is a practice in investor state arbitrations and where tribunals would rely on red flags, circumstantial evidence where something just doesn't look right. And we have a list. I have a list of cases, but I'm looking at time and Jonathan is looking at time. So I shall not bore you with those. But there's a list that you know. You can think of EDF v Romania, Metal-tech Uzbekistan, Spentex v Uzbekistan, Methanex v

USA, ECE vCzech Republic, Libya v Sorelec. I want to draw your attention to Libya v Sorelec, where the Paris Court of Appeal on 17th November 2020 established the following principles based on circumstantial evidence in countries with high levels of corruption. The first one is Libya's generally high level of corruption.

Professor Emilia Onyema: That should put any arbitrator on notice. Are we then saying that once the country is not scoring, or has very poor scores or rating on Transparency International Index, that we should get our magnifying glass out? No, but it should put the tribunal on some form of notice. I think that's the point. Then talked about the unclear governmental structure for Libya at that time, lack of observance by the Minister of internal approval procedures, lack of proper documentation of the negotiation terms. In Rutas de Lima v Lima, for example, the tribunal found it had the duty and power to decide the corruption point even when this was not requested by either party, and is not the only case. There are lots of cases on this. How about commercial arbitration in ICC case number 12990. The tribunal found evidence of corruption from a number of red flags, lack of evidence, brevity of negotiations, unusual payment arrangements, disproportionately high remuneration corruption being endemic in the relevant country, secrecy, incrimination of persons involved. So. In my view, and in my own practice, so I'm not saying to the community what I haven't done before, I've had an arbitration, no connections with Africa. So that your temperatures can come down, where I was asking questions and documents, and the party wasn't providing and I was suspicious. And I said to the party, I'm suspecting that money must have changed hands.

Professor Emilia Onyema: They said no of course not madam. No no no, the documents are coming, and the documents showed up. So what are we asking tribunals to do? My understanding of what Justice Knowles is saying, is to ask questions. Just ask questions, ask both parties questions. And I'm aware that some tribunal, some arbitrators are concerned about, oh, we don't want to be labeled impartial or due process problems. But if you give both parties the opportunity to make submissions on your questions, they're responding to your questions. That should not be a problem. So in my view, if an allegation of corruption is raised, or if there are circumstances as to suggest corrupt practice, the tribunal should deal with it or raise its suspicions and give the parties an opportunity to respond to its concerns. Should the tribunal be concerned with due process and any accusations of bias? The tribunal can balance these two obligations because though seemingly conflicting, they are not in substance. Where the corruption is raised before the tribunal or the tribunal strongly suspects some corrupt practice which it raises with the parties, the tribunal should give the parties an opportunity to address it on the issue. If it does this, then no question of lack of impartiality or objective determination of its mandate should arise. The problem that our community has, in my view, is when the tribunal turns a blind eye.

Professor Emilia Onyema: And that is a problem. So, in conclusion, you'll be glad to know that finally, I'm going to conclude. In conclusion, I have focused on the local communities who are directly impacted by the actions of states and companies in commercial transactions, and also, in arbitrations arising out of such transactions. I have examined some of the current tools we adopt in international arbitration to provide some semblance of engagement of the local communities and concluded that these., that is transparency convention rules and use of amicus curiae are not effective tools. I have made a radical suggestion that local communities directly impacted by any arbitration, investment or commercial, should have direct access as witnesses and to provide evidence to such tribunal as of right, without the need for them to be parties to the transaction or arbitration agreement, but simply on the basis that the law recognizes that they are directly impacted by the outcome of the arbitration. As it relates to transactions tainted by corruption, where with a state party, such that the citizens of the state would be directly impacted by the corrupt practices of the public officials and private entities, I have agreed with Justice Knowles that transparency in the sense of open justice should be the norm even in commercial arbitration and not only in investor state arbitration, to ensure that the ultimate beneficiaries of the award are provided with access to the process. In relation to the arbitration community, I suggested that arbitration has the core mandate of being a tool of justice delivery.

Professor Emilia Onyema: This therefore means that arbitrators need to be more proactive, I'm not going to go into the debate of whether to be more inquisitorial or adversarial, and ask relevant questions when the circumstances demand, and they should give the parties the opportunity to make submissions to them on the issues that they have concerns over to ensure that justice is done. I also note that due process will still be observed when parties are given the opportunity to respond to such questions or concerns. I accepted the point that there will be a measure of experience required by the tribunal in maintaining their role as neutral decision makers and not counsel. Would this have helped in Nigeria versus P&ID? I think so. Though, it would have helped and been in favor of the tribunal, not the parties. The result would still have been the same on liability, though the amount awarded in damages may not have been the same. We do not know. So what do I want you to take away from listening to me over the past 45 or more minutes? Rounding up, I will be grateful if you can rethink your practice as arbitrator and possibly your understanding of your role in the arbitral process. Can you reshape your role in the process so that you evidence your understanding that this is a judicial process that should deliver justice to all impacted by your decision? If you at least think about this,

Professor Emilia Onyema: then my task this evening has been a success. I'm marking my own paper. If I have not been convincing, I think that the judgment of Mr. Justice Knowles in Nigeria vs P&ID will invariably achieve this outcome. Because you do not know when your conduct of an arbitration and your award will be available to the

general public to discuss the way, we've been discussing Nigeria versus P&ID. So, I'm going to leave you with what Justice Knowles said in paragraph 592. I quote, 'this case has also sadly brought together a combination of examples of what some individuals would do for money. Driven by greed and prepared to use corruption. Giving no thought to what their enrichment would mean in terms of harm for others. Others that in the present case includes the people of Nigeria. Already let down in so many ways over the history of this matter by a number of individuals in politics and administration whose duty it was to serve them and protect them' end of quote. As arbitrators, should we, in such circumstances, continue to turn a blind eye? I honestly hope not. So, thank you for patiently listening to me and to the Ciarb again for this invitation to share some thoughts on these important issues in the evolution of arbitration as an effective tool for justice delivery. Thank you.

Johnathan Wood: I mean, so Mr. Justice Robin Knowles- and I think at the London International Disputes Week, he was at one of the sessions and I think basically said, look, the system isn't wrong, arbitration isn't wrong, we've just got to do it better. And I think that comes out from what you have to say. But I want to rewind to the beginning of what you were talking about. And that is the responsibility that we have to citizens, as you describe it. And I'm a traditionalist, so I ask this question: it's all very well in the context of investor state, where we know we have access and openness to the process, but not necessarily in relation to commercial arbitration, although confidentiality isn't a given in every jurisdiction. Is there something in between when it comes to cases involving states. So, you know, investment treaty arbitration... We see the whole thing. But in commercial arbitration, quite often it's confidential. Should there be some exception for states, do you think?

Professor Emilia Onyema: I think of course there should be exception for states. P&ID involved a state and state entity and a private company. And so states also participate in commercial transactions. And so with foreign parties or even domestic parties, they would have arbitration agreements. So my view, I agree with justice Knowles if it involves a state, then I think it's massively important that the process is transparent. I think they- the arbitrators need to also appreciate that there's 220 million people who would be impacted by this. I think that would have made a difference. So I agree, I think that yes, it should be states, it should be transparent.

Johnathan Wood: So it then begs a question arbitration versus court proceedings. So, one of the slides that you showed was the Mariana dam disaster in Brazil, which is now before the English courts. And at first instance, was halted because it was said to have been an abuse, because it was unmanageable. We now have that case going ahead, and there are 720,000 parties to that piece of litigation, which is quite astonishing. Is arbitration going to be swamped, are we, you know, how how- if what you say is right and everybody's entitled to their voice, are we going to be confronted by an

overwhelming, you know, number of people being involved, or do we have some other way of dealing?

Professor Emilia Onyema: I think it's working out the mechanics for this. And so are you going to have in a Nigeria versus P&ID scenario where you have P&ID facing 220 million people? Of course not. And so the question is, how do we ensure that local communities, the citizens actively participate, that they they can participate? I think that is something that we , the community, we need to think about this. We need to think about it. I'm not the only one saying this. Like I said, it was mentioned in working Group three. It didn't go any further for obvious reasons. You know, the practicalities. How would this work out?

Johnathan Wood: So it reminds me, I mean, I started my life as a criminal defense lawyer. So it would be- and I have done many bribery cases. Let me just tell you but, you know, it's like having a victim impact statement in some ways and if anybody has read Philip Sand's book on the Chagos Islands, one of the most powerful victim impact statements came from Elyse, Liseby Elyse. I'm sure you've read the book, and it was very powerful, but that was in the ICJ and of course, it was open to everybody but how we get that in front of the arbitrators, how we get that sort of sense that there is this obligation beyond just the parties, I think is-

Professor Emilia Onyema: And that's why in the paper, I also said we might also consider the parties themselves being required to produce evidence, to produce witness statements from the local communities or people impacted. But more importantly is when you have those what, should the tribunal do with it? It is a very, very difficult...

Johnathan Wood: And I've seen it I've seen the amicus curiae, process in I was involved in the Bywater and Dar es Salaam case, of course, where I think it was used for the first time but the trouble with that was that, you know, NGOs have their own kind of, you know, agenda and do not necessarily represent the, the citizens themselves. They have bigger agendas. So I think the amicus route is not necessarily the best one.

Professor Emilia Onyema: Well, it's developed, so it's no longer just NGOs putting in amicus briefs now, it's developed, and you have individuals that- we have a case where a lawyer felt that they could put in, an amicus brief. So those things are developing, and these are all tools. So my view is as long as the community considers that there is something here, there is a gap. And how do we ensure we can hear all of those voices? We can engage with all of those interests? Because ultimately, if this is about justice delivery, then it's you know, you can write your award, but the people that are impacted by it, what then happens.

Johnathan Wood: So I've been in many a case, I have to say where I've, where government has been involved, particularly our own government actually. And I've often heard the council say of course this has an impact on the taxpayers of this country. You know. But it goes further than that.

Professor Emilia Onyema: Well, but the problem you also have, the other side of the coin is that in most developing countries that rely on extractives, the state income is not necessarily reliant on tax. And so they might not make that sort of connection, or that argument. You know. So those are where countries differ in their interests. And this I think that we need to find a measure or we need to find a response that would be applicable to all states, not just to weak states, so that again, it would gain broad acceptance and something that would be more viable. But what exactly it is and how we should go about it. I don't have the answer yet.

Johnathan Wood: The audience. Any questions? So. Mohammed.

Speaker 1: I'm not involved- Mohammed Abdel Wahab from Egypt. I'm not involved at all in the case, and I have no intention of defending the award, and I have no views about that. But I think it's important, since Emilia mentioned this several times and it's very, I'm very grateful for the insightful contribution and presentation you've made. I think we need to rethink a lot of things. One. What is justice? People will differ on what we think justice is. Secondly, thinking of arbitrators as the Guardians of the Galaxy doesn't work. The distinction between ISDS, and I think this has been alluded to, and commercial arbitration is important. But let me pose that question because I think one of the common mistakes that we usually make is that we only look at the final product, which is the judgment. In that case, look at the award, look at the submissions, look at the evidence to be able to arrive at whether the arbitrators acted reasonably or not and perhaps to give people who may not be familiar. This is a case where you've had witness evidence from someone called Mr. Quinn, who was the chairman of P&ID. No counter evidence on the other side. Mr. Quinn, I think, died during the arbitration. The tribunal bifurcated the proceedings to jurisdiction, liability and then quantum. The tribunal looked at quantum, looking at the CapEx. The OpEx even recognized that the 6.597 billion, which ultimately reached, by the way, 11 with the 7% interest, is actually a function of the net present value over 20 years that you're discounting this in that manner.

Speaker 1: Now, maybe if I'm in the arbitral tribunals hand, I would not rely on a straw man type of model because there was a feasibility study and stuff. But but I think it's important to bring all those elements into the mix, to say whether the tribunal did what they should have done or not. But I also think, more importantly, and I apologize if I'm taking some time, but I think it's it's it's relevant to discuss that is that let's imagine the following scenario. The tribunal gave P&ID 40 million. Only. Would this award? Have been

in public and anyone would be upset with it, other than P&ID, no. This to me suggests that there is a fundamental flaw in the analysis, because the analysis presented in the award is not about the quantum, it's about the liability in principle. Yet if there was a different decision on quantum, we would not be having this discussion, which is a major problem. Two. If the issue of quantum- an approach to decision making, was flawed. Why did you pick that president in the first place? This is an ad hoc arbitration, Nigerian law. You've got, of course, a prominent arbitrator appointed by claimant, a prominent arbitrator, Nigerian appointed Chief Adebayo Ojo by the state and both they agreed on a retired English judge. And the tribunal relied on Nigerian precedents when looking at cases.

Speaker 1: So it all starts from the very beginning. If you haven't seen the writing on the wall. As to appointing someone with a certain mentality and approach, perhaps you could have thought it in a different, in a reverse way. And all I think this needs to come to the mix is that at the end of the day, there is a fundamental flaw if we're not challenging liability. But all this is based on quantum. And if we are looking at what the tribunal should have done, we should bring all the evidence and see whether it was reasonable or not. And then finally, where do arbitrators draw the line? You can ask questions, and indeed questions are asked. But if there are no responses, what should you do? I mean, the French courts, for example, have taken a different view. And they said when it comes to corruption, we don't care whether it has been invoked or not. We don't care what the tribunal has decided. We will consider it afresh and de novo. The English courts said the other way, we're not going to do that. There are issues of estoppel because of the rivalry about the seats. Now we have that decision which came out. But but it is important. So I just wanted to throw this into the mix to see what you think about all these elements. Should that be part of the analysis before we judge the decision one way or the other? Thank you.

Professor Emilia Onyema: If the discussion is an analysis of P &ID the full thing, then of course, yes, you have to look at everything, but that is not the goal of what I set out to do. And I set out- just picked on certain things. And you're absolutely right. And Justice Knowles himself recognized the weaknesses on the part of, the Nigerians and their submissions. the way I look at P&ID versus Nigeria is that it's going to- is a seminal case. It raises almost everything can go in there. Which is why I'm grateful that P&ID had rejected the settlement offer made by the Nigerian government. They had offered them $1 billion and they said no because they had an award for 6.6 billion, which I think makes commercial sense, foolishly. But anyway, at least they said no which is great because that is why we have this in the public domain. I think- and that's the point I make when you sit as an arbitrator. Yes, it is private. But it may also become very public.

Johnathan Wood: I think we all agree. When you're writing an award, the last thing you want to have happen is to end up public and scrutinized by the courts. I mean, I think...

Professor Emilia Onyema: And the arbitration community, yes, you know, and the arbitration community, because that's what we've done with P&ID and some of us are now sort of trying to be very kind to the arbitrators because we're discussing this with hindsight.

Johnathan Wood: Mercy-we have people online. Are there any questions that you would like to raise here?

Mercy McBrayer: Indeed. Okay. So Isaac Aluochier, from Kenya, has drawn our attention to the International Covenant on Civil and Political Rights, which was ratified by 172 states worldwide and acknowledges the right, quote, 'the rights of citizens, residents and those states to a fair and public judicial process before a competent, independent and impartial tribunal'. So he asks, is there anything stopping practitioner, arbitration practitioners from incorporating a provision like this into their arbitrations, thereby providing for public and accountable arbitrations? Would it have an effect?

Professor Emilia Onyema: Well, I suppose that's the same thing we've been talking about for commercial arbitration. It's a private process, and we have to be careful, because if we sort of think of the classic commercial dispute between two private companies, that it's their own business, it's their own interest, it doesn't implicate any public interest, has no state agency, nothing. Do we want all of that in the public? In the public domain?

Johnathan Wood: So it begs the question often, I mean, you know, between confidentiality and transparency and there's a, you know, there's a debate as to, you know, because every client says, well, you know, I'm very, you know, transparency is very important, but I want my case to be confidential. You know, we have this real problem about, you know, the difference between transparency as a principle and, and confidentiality questions anymore over there. Yeah. Matt.

Speaker 2: Thank you. I had the privilege of listening to your speech at a very powerful then and and typically powerful this evening. What I'm interested in is the structure of arbitration to, to address these, these issues that you've identified. And what I'm thinking in particular is what you talk about the red flag principles. So do you think the red flag principles allow council... Does it lower the bar in terms of allegations or inferences of corruption and fraud? Within the existing structure or not, because I think I think one of the my sort of thoughts on this process is that council have certain strict duties and obligations in terms of allegations that they can make, and they don't get their hands on the documents. They might have a sniff and a smell. But do you think that the red flag principles equip Council to perhaps make these submissions, that then equip the arbitrator or the tribunal to to have a deeper dive and request for documents and such like?

Professor Emilia Onyema: Yes. And I think we do need to keep in mind that the idea with the red flags is for for the use of the arbitrators. And so it depends, because parties may also not want the corruption point, at all to be aired in the arbitration. Michael Hwang had shared about, two arbitrations that he had where he had also adopted the red flag that, the parties weren't saying anything, and so he raised the question. He asked questions of of the parties and asked for submissions. And they both reluctantly made submissions such that there was nothing really that he could do with the submissions that they had made. So there was really no evidence. There was nothing there. But it was obvious that both sides were just not being upfront. They were not fully participating or being honest. Now, what that means, I think maybe we forget that, for example, the Swiss courts, will say, well, it's been dealt with in the arbitration. Corruption was not found. That's it. They move on. So they're quite different from the way the French courts treat it. And that is a risk that the party is taking. But if both sides voluntarily participated in the corruption, they might not want to make necessary submissions.

Johnathan Wood: So anecdotally, one often hears comment to the effect that tribunals... Arbitrators shy away from finding, making, you know, finding fraud in cases 'they're not robust enough'. You have to have a certain type of arbitrator to deal with this sort of issue because, you know, it's, you are raising the bar in terms of accepting evidence of a high standard of, you know, beyond the balance of probabilities. I think it's a certain type of arbitrator who is capable of dealing with this sort of case.

Professor Emilia Onyema: I think any arbitrator should be able to deal with it. It's just understanding your role in the process. But at the same time, it's not just every little problem or mishap that, you know, one should make a finding of corruption. It has to be something really serious that has to cross a certain threshold or bar, but I think any arbitrator should be able to deal with it. Arbitrators should be encouraged to deal with it.

Johnathan Wood: Gentlemen there. Yes, you sir.

Speaker 3: Hi. Daniel Djanogly, chartered arbitrator and accountant. I'm interested in the first part of you, for this purpose of this question, the first part of your presentation, which was very interesting insight. And thank you. You seem to exclude inquisitorial powers, In terms of comment. I'm wondering whether there is something that might want to just explore there, because at the same time, it seemed to me, and this is what I pick up on for this purpose, for this question, that there's a, an issue might be the volume of potential witnesses that represents local communities and impacted. So we have a volume issue in gathering evidence from potential witnesses, which may be addressed through technology in the way of electronic surveys, maybe AI. Yes. Logistical challenges and and risks to be managed. But it would seem if you were to group the 720,000 or whatever it is potential witnesses into effectively the witness group, there

would be a way, it seems, subject to or a good organization to allow them to contribute and explore their evidence.

Professor Emilia Onyema: Yeah, I agree.

Johnathan Wood: Simple. Brandon.

Speaker 4: Brandon Malone, chairman of the Scottish branch for these purposes. I think I have a number of state and state emanations before me in cases just now. And and yes, obviously, if I decide against those parties, commercial contracts, their citizens will be extended, affected to a greater or lesser extent. I'm not clear whether you're suggesting that that ought to form part of my thought process, because I think that's certainly the way things are at the moment, that's potentially very problematic. But I mean, what I, what I understand to be, perhaps more of an issue that's leading to... Because I think we're possibly confusing unfairness and justice, as we talked about, and these are different concepts. But what I understand to be a big problem at the moment, and we discussed this at the conference, that we were discussing earlier, the energy arbitration, one that I do in London. A big theme there was about inequality of arms and the methods of valuation of damages and how that can lead to, unfair results or perverse results, perhaps because there just hasn't been that equality of arms in approaching the question of loss from the same direction. So I wonder if that's an opportunity for a tribunal to maybe come more inquisitorial, and make more of a role and say, look, the one expert team isn't really matching the quality of the other expert team at the tribunal or tribunal to be, appointing its own experts or seeking further independent advice to try and balance out and interpret and match up the different cases.

Professor Emilia Onyema: But those are just tools that the tribunal can use to, again, ensure that it does justice. So it's not fairness, it's different from justice, of course, but those are tools available to the tribunal.

Johnathan Wood: Mercy.

Mercy McBrayer: So we've had more than one person ask a version of this question online. Olufunke Adekoya asks, to the extent that the arbitral tribunal feels that a party is not adequately resourced (two questions), would its intervention not result in allegations of bias? And secondly, who decides whether a party is legally under-resourced?

Professor Emilia Onyema: Very similar to Brandon's question, I think those are difficult questions and issues. Again, for the tribunal to deal with. It is not for the tribunal, as I said, to enter into the dispute, because tribunal is not counsel. That is very clear. But the

tribunal can ask questions of both sides. And even Justice Knowles mentioned in his judgment the support from the P&ID tribunal. Trying to ask questions where they didn't ask questions, but trying to encourage if you like. I think that's a better way of putting it. The Nigerian side, they gave them extensions and things like that. And so they- I think that by Justice Knowles talking about the traditional approach, the question then becomes, well, it's really your job, and my job is to listen to you. My job is to make lemonade with the lemons that you give to me. I think that's the way it's said, you know, but what we're saying is that, yes, I think for a lot of arbitrators, they will feel more comfortable if one side is not represented. And then they need to ask questions not to take the role of the unrepresented side. But I think they will feel more comfortable in asking questions. But where it is obvious that counsel is not asking or responding to the questions that they should be asking or responding to, what should the tribunal do? I don't think that the tribunal should just fold their hands and say, well, we're adopting the adversarial approach or whichever approach you prefer and so it's not my problem. It's your problem. Because ultimately now we're talking about P&ID versus Nigeria. Nobody's talking about counsel in P&ID versus Nigeria. Everybody is talking about the arbitrators. It is their award. It's not the award of counsel.

Johnathan Wood: So if it was under the Prague rules, which is more...

Professor Emilia Onyema: Which is much more, inquisitorial and yes. And you know. Yeah. Yeah. Maybe that would help.

Johnathan Wood: Chikwendu.

Speaker 5: Thank you very much, Mr. President, and thank you very much Professor Onyema for your sharing your thoughts with us this evening. I want to make one general comment and then one specific comment with regards to P&ID and of course, as a Nigerian, you know, that will be of interest to me. Now, with regards to your presentation on ideas, I like to think that we have to recognize the fact that ISDS essentially is a rule-based mechanism and therefore runs on the basis of rules. And it will be, it will be expecting too much on a tribunal to go outside of rules. And with regards to transparency, a lot of improvements have been made. And if you also look at the jurisprudence coming out of ISI recently and even the PCA recently, a lot of host states have come out victorious. So there is nothing inherently wrong, in my view, with ISDS, you know, as it were. But of course, I take the point that a lot of tribunals do, you know, once in a while, you know, raise issues of either misjudgment or lack of understanding of the issues at stake and with regards to what our president 2025, has said, I as a Nigerian, I think most people have the view that our our we challenge both the decision on liability and decision on quantum. So it's not just on quantum now. And I will give you, you know, an instance- if you read that award and I mean, it's difficult to understand why a tribunal will use the discounted cash flow model to calculate damages for an

investment that has not started. Most tribunals will use a sunk cost approach rather than discounted cash flow. That is one. Then number two, I you- let me not sound judgmental. I think it's better I stop it at this point. Thank you very much. Thank you.

Professor Emilia Onyema: I think we all agree that, ISDS is rule based. And so yeah, you're absolutely right. We do agree on that. Yeah. Any more questions or should we go for drinks?

Johnathan Wood: Yes, One more question. Oh, right. One. Well, one question from mercy and then one question from...

Speaker 6: Hello. Thank you very much. Really amazing. I, I have one.

Johnathan Wood: Would you like to tell us who you are?

Speaker 6: And Nazareth Romero Ovoli Frugoni Romero Abogados. It's a pleasure being here from Madrid, Spain. And I have a one question ...and first on regarding prevention, which is your point of view, considering a the the rules of business human rights arbitration because these rules, as you know, probably better than me, could apply and in fact, since they are enforced in 2019, began in different investment arbitration regarding Africa state has been enforced. So maybe this could amenorrate this kind of problems. I wonder, I wonder and second regarding the access the justice of these people. In the first part of your lecture, what do you think about third party non presenting in the in the in the contract? Who could be present in the process? Okay. We have another problem, the problem of cost. Because I have - I am an arbitrator but also criminal lawyer when I initiate a practicing in Madrid Spain, and this kind of- which is your idea regarding this problem third party not in the contract, but we have other problem is the cost of applying and being there. Thank you very much. Yeah.

Professor Emilia Onyema: And cost is a huge problem even in filing amicus briefs. It is a massive problem. And that is one of the questions that, you know, I had mentioned who's going to pick up the cost, for this. It's not just pulling all of these 700 and whatever thousand people together, but it is expensive. And that's where the international NGOs come in and public interest litigators. But it has to be what they are interested in and if it's not something they're interested in, they're not going to fund it. So that's a huge problem as well.

Johnathan Woods: Agree okay. Well it's past 8:00. And so I think that it's time for drinks.

Johnathan Woods: I think you deserve a drink. So I would like to round off by thanking you a great deal.